

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DIETRICK LEWIS JOHNSON, SR.,

Plaintiff,

v.

STEPHEN ASH,

Defendant.

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Civil Action No. **3:13-CV-4538-L**

ORDER

Before the court is Dietrick Lewis Johnson, Sr.'s ("Plaintiff") Complaint (Doc. 1), filed on November 13, 2013. The case was referred to Magistrate Judge David L. Horan, who entered Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report") (Doc. 8) on December 4, 2013, recommending that Plaintiff's Complaint be dismissed. No objections have been filed.

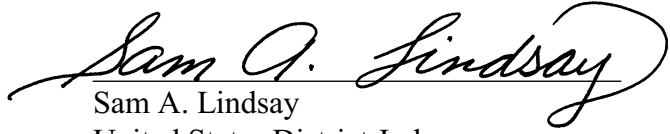
Plaintiff brought this pro se civil rights action alleging that he was improperly prescribed medication for depression, which caused mood changes and led to his arrest for stalking, kidnapping, carjacking, and attempted murder. The court granted Plaintiff leave to proceed *in forma pauperis* and allowed Plaintiff's Complaint to be filed. Plaintiff seeks \$3.5 million in damages from Dr. Stephen Ash, a urologist, and \$20 million in damages from an unnamed drug manufacturer.

Pursuant to 28 U.S.C. § 1915(e)(2), a district court can dismiss a complaint filed *in forma pauperis* if it concludes that the action is (1) frivolous; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. Plaintiff cannot recover under 42 U.S.C. § 1983 since none of the alleged conduct by Dr. Ash or the

unspecified drug manufacturer involves conduct of a person or entity acting under color of state law. Additionally, a claim of medical negligence cannot be remedied in a section 1983 claim. *Mendoza v. Lynaugh*, 989 F.2d 191, 193 (5th Cir. 1993) (“It is clear that negligent medical treatment is not a cognizable basis upon which to predicate a section 1983 action.”). For these reasons, Plaintiff’s Complaint fails to state a federal claim upon which relief may be granted.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, Plaintiff’s Complaint is **dismissed with prejudice** as to any purported federal claims; however, this dismissal is **without prejudice** to Plaintiff filing state law claims in state court.

It is so ordered this 31st day of December, 2013.


Sam A. Lindsay
United States District Judge